



Signed and Filed: April 05, 2007

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
ROBERT C. THOMAS,
Debtor.

Case No. 05-31615
Chapter 13

**MEMORANDUM DECISION REGARDING DISCRIMINATION
FOR NON-PAYMENT OF DISCHARGEABLE PARKING TICKETS¹**

For the reasons set forth below the court will direct the Department of Motor Vehicles ("DMV") and the City and County of San Francisco ("CCSF") to permit debtor Robert C. Thomas ("Debtor") to register his vehicle and obtain a residential parking permit, provided that Debtor pays post-petition street sweeping citations and similar charges, and provided further that Debtor remains eligible for a discharge of his pre-petition debts

¹ The following discussion constitutes the court's findings of fact and conclusions of law. Fed. R. Bankr. P. 7052 (incorporating by reference Fed. R. Civ. P. 52(a)). Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as enacted and promulgated prior to the effective date of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23, because this case was filed before its effective date (generally October 17, 2005).

1 to DMV and CCSF. The court will also enjoin CCSF, DMV, and the
2 California Franchise Tax Board ("FTB") (collectively, the
3 "Governments") from attempting to collect post-petition citations
4 for non-registration of Debtor's vehicle, parking without a
5 residential parking permit, or other charges that are proximately
6 caused by their impermissible discrimination for nonpayment of
7 pre-petition debts. The court will deny Debtor's requests for
8 damages.

9
10 I. Background

11 Debtor, who owns a 1973 Chevrolet, had at least seventeen
12 unpaid parking citations when he filed his Chapter 13 petition on
13 May 23, 2005 (the "Petition Date"). Any remaining debt on account
14 of those unpaid pre-petition citations will be discharged pursuant
15 to Section 1328(a) when and if Debtor completes his payments under
16 his Chapter 13 plan confirmed by the court on September 23, 2005.
17 The dischargeability of those citations has been conceded on the
18 record by counsel for the Governments.

19 In June of 2005 Debtor attempted to purchase a neighborhood
20 parking permit from CCSF's Department of Parking and Traffic
21 ("DPT"). That permit was denied. According to Debtor, he has to
22 move his vehicle every two hours because he lacks a parking
23 permit. Debtor has been cited at least twice since the Petition
24 Date for parking in a residential zone without a residential
25 parking permit. (Ex. A to Houlihan Decl., filed 4/28/06, docket
26 no. 50 ("Houlihan Decl.)) On July 16, 2005, Debtor wrote to the
27 Citation Review Center of the DPT objecting that "I was refused
28 because of outstanding parking tickets" and noting that "DPT was

1 served with notice" of his Chapter 13 petition. (Ex. A to Thomas
2 Decl., filed 3/29/06, docket no. 36 ("Thomas Decl.)) CCSF
3 nevertheless refuses to issue a parking permit to Debtor.

4 On or about July 14, 2005, Debtor received a Vehicle
5 Registration Renewal Notice from DMV. Debtor alleges, and DMV has
6 not denied, that the normal registration fees would be \$182.00 but
7 DMV included an additional \$1,600.00 for outstanding parking
8 tickets for a total demand of \$1,782.00. The total demands
9 increased to \$2,436.00 in December of 2005 and \$2,956.00 in
10 January of 2006. CCSF concedes that since Debtor is unable to re-
11 register his vehicle with DMV he is unable to change his vehicle's
12 address of record, which is an additional reason why he has not
13 been able to obtain a residential parking permit. Debtor alleges
14 that he has attempted to contact DMV by telephone but has been
15 unable to get through to anyone who can help him. (Thomas Decl.,
16 ¶¶ 14-17 and Exs. C and J.) Debtor has been cited at least three
17 times by DPT and once by the City of Berkeley since the Petition
18 Date for not having vehicle registration tabs. (Houlihan Decl.,
19 Ex. A; Thomas Decl. ¶ 19-20.) Debtor wrote again to the Citation
20 Review Center of the DPT on January 26, 2006, objecting that "I
21 have been unable to purchase my current tabs and register my
22 vehicle with the DMV because of a hold placed on the renewal of my
23 vehicle by the DPT for parking tickets which have been [sic]
24 discharged in bankruptcy." (Ex. H to Thomas Decl., emphasis in
25 original.) The liability for those tickets has not yet been
26 discharged but Debtor apparently means that his pre-petition
27 parking ticket debts will be discharged upon completion of his
28 Chapter 13 plan.

1 On March 13, 2006, FTB issued a document entitled Demand for
2 Payment - Vehicle Registration Collections. The document states
3 that DMV has referred Debtor's account to FTB for collection. It
4 demands payment of \$2,956.00, failing which FTB threatens to
5 attach Debtor's bank account, garnish his wages, and seize and
6 sell his personal property. (Ex. M to Thomas Decl.)

7 Debtor initially asserted that the Governments were violating
8 the automatic stay of Section 362(a). On March 29, 2006, Debtor
9 filed a Motion For Damages For Violation of The Automatic Stay
10 (docket no. 34), but the court denied that motion, Debtor
11 appealed, and the District Court affirmed as to the Section 362
12 issues. The District Court also remanded to consider an issue
13 raised by Debtor for the first time on appeal: whether the
14 Governments have violated Section 525(a) by denying Debtor's
15 permit and registration applications.

16 The court set a status conference, the parties agreed to file
17 simultaneous briefs, and the matter came on for hearing on March
18 16, 2007. At the end of the hearing the court took the matter
19 under advisement.

20 21 II. Discussion

22 Section 525(a) provides, in full:

23 § 525. Protection against discriminatory treatment

24 (a) Except as provided in the Perishable
25 Agricultural Commodities Act, 1930, the Packers and
26 Stockyards Act, 1921, and section 1 of the Act
27 entitled "An Act making appropriations for the
28 Department of Agriculture for the fiscal year
ending June 30, 1944, and for other purposes,"
approved July 12, 1943, a governmental unit may not
deny, revoke, suspend, or refuse to renew a
license, permit, charter, franchise, or other

1 similar grant to, condition such a grant to,
2 discriminate with respect to such a grant against,
3 deny employment to, terminate the employment of, or
4 discriminate with respect to employment against, a
5 person that is or has been a debtor under this
6 title or a bankrupt or a debtor under the
7 Bankruptcy Act, or another person with whom such
8 bankrupt or debtor has been associated, solely
9 because such bankrupt or debtor is or has been a
10 debtor under this title or a bankrupt or debtor
11 under the Bankruptcy Act, has been insolvent before
12 the commencement of the case under this title, or
13 during the case but before the debtor is granted or
14 denied a discharge, or has not paid a debt that is
15 dischargeable in the case under this title or that
16 was discharged under the Bankruptcy Act.

17 11 U.S.C. § 525(a) (emphasis added).

18 The Governments argue that their refusal to register Debtor's
19 car or grant him a residential parking permit is not "solely"
20 because of his non-payment of dischargeable debts. They claim
21 that Debtor is a parking scofflaw and that they acted as they did
22 to deter illegal parking. According to DMV and FTB, the District
23 Court has "in effect" already held that Debtor's non-payment is
24 not "alone" the proximate cause because it held (as did this
25 court) that they were validly exercising police and regulatory
26 powers for purposes of Section 362(b)(4). (DMV and FTB brief,
27 docket no. 78, p.4:24-28.) CCSF also argues that Debtor has the
28 alternative of performing community service to satisfy his
29 citations, so he could have obtained his registration and parking
30 permit without paying the dischargeable debts.

31 The court is not persuaded. First, if the District Court had
32 already effectively decided the issue then it would not have
33 remanded. Second, the words and purposes of Section 362(b)(4) and
34 Section 525(a) are entirely different and the Supreme court has
35 interpreted the word "solely" in Section 525(a) to mean proximate

1 cause or triggering event:

2 Section 525 means nothing more or less than that
3 the failure to pay a dischargeable debt must alone
4 be the proximate cause of the [government's action
5 or refusal to act] -- the act or event that
6 triggers the agency's decision . . . , whatever the
7 agency's ultimate motive in pulling the trigger may
8 be.

9 F.C.C. v. NextWave Personal Communications Inc., 537 U.S. 293,
10 301-02 (2003) (emphasis added).

11 The Governments' attorneys conceded at oral argument that if
12 Debtor were to pay their demands then they would issue his
13 registration and parking permit, even if Debtor is an
14 unrehabilitated scofflaw. Payment is the trigger. Debtor has
15 established proximate causation.

16 The Governments cite In re Kimsey, 263 B.R. 244 (Bankr. E.D.
17 Ark. 2001), but in that case the debtor pleaded guilty to "driving
18 without a driver's license, unsafe driving, failing to have proof
19 of liability insurance (and, in a subsequent year, failing to have
20 liability insurance), leaving the scene of an accident, driving on
21 a suspended license, and failing to yield the right of way." Id.
22 at 246. The debtor in Kimsey alleged that the refusal to
23 reinstate his license was for financial reasons, but the court
24 found "no evidence" that the government "has in fact taken any
25 action to collect the debt." Id. Instead it found that "the City
26 is not refusing to reinstate the debtor's license because of his
27 bankruptcy filing, but, rather, seeks to enforce the traffic laws
28 which permit termination of the driving privilege based upon
29 violations of the law." Id. at 247.

30 The Governments cite cases involving what are called
31 financial responsibility laws for motor vehicle drivers. Those

1 laws do not require drivers to maintain insurance unless they have
2 been in an accident resulting in an unpaid judgment. Such laws
3 have been held not to violate Section 525(a). See, e.g., Duffey
4 v. Dollison, 734 F.2d 265 (6th Cir. 1984). Duffey, however, held
5 that the statute at issue "neither provides creditors 'leverage
6 for the collection of damages,' nor under the facts here does it
7 coerce bankrupts into reaffirming discharged debts. Perez v.
8 Campbell, 402 U.S. 637 [1971]." Duffey, 734 F.2d at 272. In
9 contrast refusing to register Debtor's vehicle and denying him a
10 parking permit both directly coerce his payment of dischargeable
11 debts.

12 The other cases cited by the Governments are similarly
13 distinguishable, unpersuasive, and mostly decided before NextWave.
14 See, e.g., In re Norton, 867 F.2d 313, 317 n.8 (6th Cir. 1989)
15 (every driver found to be financially irresponsible, whether
16 bankrupt or not, must pay \$65 license restoration fee, and "It is
17 certainly within the legislature's discretion to shift the costs
18 of the program to those drivers who make such a program
19 necessary."); In re Geiger, 143 B.R. 30 (E.D. Pa. 1992) (Section
20 525(a) does not bar payment of \$25 license restoration fee).

21 The Governments also argue that their refusals to register
22 Debtor's car and issue a parking permit are justified because
23 Debtor has post-petition citations that were not caused by non-
24 payment of pre-petition debts. It is true that Debtor has post-
25 petition street sweeping citations but his brief clearly states
26 (docket no. 75, p. 2:21-24), "The debtor makes no claim that the
27 Bankruptcy Code protects him from post petition fines or penalties
28 that do not have their basis in lack of a permit or valid

1 registration." Debtor's counsel conceded at oral argument that
2 Debtor must pay these citations even if the court agrees with
3 Debtor on the Section 525(a) issues. Moreover, the Governments
4 provide no evidence that they ever told Debtor they would accept
5 anything less than full payment, including payment of all
6 dischargeable debts. FTB's demand even warns, "Partial payment
7 will not stop collection action; you must pay the full amount
8 due." (Ex. M to Thomas Decl.)

9 The Governments also suggest that it would be unfair to
10 require them to issue a registration and parking permit when
11 Debtor has not yet completed his Chapter 13 plan and therefore has
12 not yet discharged his pre-petition debts. That argument is not
13 persuasive because the statute clearly refers to "dischargeable"
14 debts, not "discharged" debts. In fact, NextWave involved a
15 Chapter 11 plan of reorganization that had yet to be confirmed so
16 there was no discharge when that case was decided but, as the
17 Supreme Court noted, the debts at issue were dischargeable.
18 NextWave, 537 U.S. at 298-99 and 303. One case cited by Debtor
19 offers an even-handed means of implementing the statute:

20 [The debtor] is entitled to a renewal license
21 during the pendency of her Chapter 13 case, and
22 discharge of her obligations upon completion of the
23 payments provided for in her Chapter 13 plan.
24 Should [the debtor] convert to a liquidation case
25 under Chapter 7 of the Code, the obligation for the
26 traffic fine would not be dischargeable,² and the
27 Department of Motor Vehicles would be justified in
28 revoking [the debtor's] license. Likewise if [the
debtor] receives a hardship discharge under the
provisions of section 1328(b), the Department could

27 ² The court expresses no opinion whether in circumstances of
28 this particular case Debtor's citations would be nondischargeable
if his case were converted to Chapter 7.

1 revoke [the debtor's] license.

2 In re Young, 10 B.R. 17, 19 (Bankr. S.D. Cal. 1980).

3 The court adopts a similar approach to that taken by Young.
4 Debtor is presently entitled to renewal of his registration by DMV
5 and issuance of a parking permit from CCSF, without waiting for
6 his actual discharge under Section 1328(a), on two conditions.
7 First, if Debtor's case is dismissed or if for any other reason
8 the pre-petition citations cease to be dischargeable then by its
9 terms Section 525(a) will not apply thereafter and the Governments
10 can refuse to issue or can revoke their licenses or permits.
11 Second, Debtor will have to pay any post-petition obligations,
12 such as street sweeping citations, that were not proximately
13 caused by his non-payment of dischargeable debts. Among the
14 charges that Debtor should not have to pay are any interest and
15 late payment fees, even as to street sweeping citations, because
16 any such interest and fees were proximately caused by the
17 Governments' refusal to issue a registration or parking permit
18 without payment in full, including payment of dischargeable debts.

19 Debtor asks that, in addition to renewal of his registration
20 and issuance of a parking permit, the court should void all post-
21 petition fines incurred because he did not have a registration or
22 parking permit, or else should award money damages equal to the
23 fines "to the extent that the fines may have been issued by
24 entities not before the court." (Debtor's brief, docket no. 75,
25 p. 5:8-9.) Debtor also seeks an award of attorneys' fees based on
26 Section 105(a).

27 The court denies Debtor's request to void any fines, assuming
28 without deciding that the court could do so. It is true that

1 collection of some post-petition fines would be incompatible with
2 Section 525(a) -- for example, CCSF should have issued Debtor a
3 parking permit without requiring him to pay dischargeable pre-
4 petition debts and therefore DPT should not have fined Debtor for
5 parking in front of his home without a permit. Nevertheless, it
6 is not clear that the fines are a nullity. If Debtor dismisses
7 his Chapter 13 case, for example, the court may be asked to
8 consider whether the fines remain uncollectible because the
9 violation of Section 525(a) already occurred or if instead the
10 fines can be collected because the pre-petition debts are no
11 longer dischargeable. The court expresses no opinion on this
12 issue, which can be raised when and if it is relevant.

13 Meanwhile injunctive relief is appropriate to preclude the
14 Governments from attempting to collect fines or other debts that
15 only arose because the Governments would not issue permits or
16 licenses in violation of Section 525(a). The court will use its
17 powers under Section 105(a) to enjoin the Governments from
18 attempting to collect post-petition debts³ proximately caused by
19 Debtor's non-registration and lack of a parking permit, including
20 interest and late fees. See In re Exquisito Services, Inc., 823
21 F.2d 151, 155 (5th Cir. 1987) (authority under Section 105 to
22 direct Air Force to order contract with debtor renewed).⁴

23
24 ³ The Governments are already prohibited from attempting to
25 collect pre-petition debts from Debtor personally or from property
26 that has revested in him, pursuant to Section 362(c)(2), the
confirmed Chapter 13 plan (¶ 6, docket no. 19), and
Section 1327(c).

27 ⁴ The court recognizes that an adversary proceeding is
28 generally required for issuance of an injunction, other equitable
relief, or certain declaratory judgments and that no such

1 The court denies Debtor's request for damages. Most of
2 Debtor's alleged damages consist of attorneys' fees and "Section
3 525 of the Bankruptcy Code does not authorize attorney fees to a
4 prevailing litigant" In re McKibben, 233 B.R. 378, 386
5 (Bankr. E.D. Tex. 1999). The only authority cited by Debtor in
6 support of an award of attorneys fees involved a "sanction for
7 ordinary civil contempt" in a case involving "egregious facts."
8 Havelock v. Taxel, 67 F.3d 187, 193-94 (9th Cir. 1995). This is
9 not a similar case. Debtor's remaining alleged damages consist of
10 fines that "may" have been issued by entities not before the
11 court, which might or might not mean the parking ticket he
12 received from the City of Berkeley. (Debtor's brief, docket no.
13 75, p.5:8-9.) The court lacks jurisdiction over entities that are
14 not before it; Debtor has provided no evidence of the dollar
15 amount of these alleged damages; it is not clear why the
16 Governments should pay for acts of other entities who are not
17 before the court; and there is no evidence that Debtor mitigated
18 his damages by contesting liability and citing Section 525(a) to
19 _____
20 adversary proceeding has been commenced in this case. See Fed. R.
21 Bankr. P. 7001(7) and (9). Nevertheless, the court treats this
22 procedural defect as having been waived in the circumstances of
23 this case. The Governments did not raise this issue in their
24 briefs or in oral argument before the court and there is no
25 apparent prejudice. See also In re Cox, 68 B.R. 788, 803 (Bankr.
26 D. Or. 1987) (waiver of need for adversary proceeding when, among
27 other things, "the parties stipulated to all facts; thus the
28 procedural provisions incorporated by Bankruptcy Rule 7001 for the
parties' protection, were here not required" and "both parties,
recognizing the legal importance and complexity of the issues
raised, allowed themselves sufficient time for legal research and
briefing"). Cf. In re Munoz, 287 B.R. 546, 551 (9th Cir. BAP
2002) (error to determine scope of discharge under Section 524
without adversary proceeding, but error was harmless when record
was sufficiently developed not to affect substantial rights of
parties or be inconsistent with substantial justice).

1 the City of Berkeley (or other entity). See In re Oksentowicz,
2 324 B.R. 628, 630-31 (Bankr. E.D. Mich. 2005) (duty to warn of
3 Section 525 violation and provide opportunity to cure).
4 Therefore, assuming without deciding that damages could be awarded
5 under Section 525(a), the court declines to award any.

6
7 III. Conclusion

8 The court will issue orders directing DMV to register
9 Debtor's vehicle and CCSF to issue him a residential parking
10 permit upon his payment of the normal fees and any post-petition
11 obligations, such as street sweeping citations, that were not
12 proximately caused by his non-payment of dischargeable pre-
13 petition debts. Such orders will no longer apply, and the
14 Governments may refuse to issue or may revoke any licenses or
15 permits, if Debtor ceases to be eligible for a discharge of his
16 pre-petition debts.

17 The court will also enjoin the Governments from collecting
18 any post-petition debts that were proximately caused by Debtor's
19 non-payment of dischargeable pre-petition debts, such as citations
20 for parking without registration tags or a residential parking
21 permit. Such injunctions will be without prejudice to the
22 Governments seeking relief in the event that Debtor's Chapter 13
23 case is dismissed or the pre-petition debts become
24 nondischargeable for any other reason.

25 * END OF MEMORANDUM DECISION *
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